

## **EXHIBIT 1**

**In the Matter Of:**

*NCS MULTISTAGE INC. vs*

*NINE ENERGY SERVICE*

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*JOHN RODGERS, PH.D. P.E.*

*November 09, 2020*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

NCS MULTISTAGE INC.                     )  
Plaintiff,                                     )  
   )  
vs.   ) CIVIL ACTION NO.  
   ) 6:20-cv-00277-ADA  
NINE ENERGY SERVICE,                 )  
INC.    )  
Defendant.                                 )

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REMOTE ORAL AND VIDEOTAPED DEPOSITION OF

JOHN P. RODGERS, Ph.D., P.E.

NOVEMBER 9, 2020

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REMOTE ORAL AND VIDEOTAPED DEPOSITION OF JOHN P.  
RODGERS, Ph.D., P.E., produced as a witness at the  
instance of the Defendant, and duly sworn, was taken  
remotely in the above-styled and numbered cause on the  
9th day of November, 2020, from 9:55 a.m. to 3:57 p.m.,  
via Zoom, before Julie C. Brandt, RMR, CRR, and CSR in  
and for the State of Texas, reported by machine  
shorthand, with the witness located in Ridgefield,  
Connecticut, pursuant to the Federal Rules of Civil  
Procedure and the provisions stated on the record or  
attached hereto.

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Ryan LaFond - Lexitas Legal Solutions

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1 Q. The last sentence of the abstract reads, Full  
2 casing internal diameter may be restored in the region  
3 where the rupture disc formerly sealed the casing.

4 Have I read the last sentence of the abstract  
5 accurately?

6 A. Yes.

7 Q. In this context, does the word "internal  
8 diameter" refer to a diameter or a sidewall?

9 A. That would come off interpreted either way,  
10 and you get the same meaning out of the sentence which  
11 is you want full bore flow through the casing. I think  
12 in the oilfield industry, you want full casing ID, you  
13 want full flow through that full bore. I am not  
14 referring to a exact measurement. I just want it to be  
15 open. So it's closer to the surface definition. I want  
16 a uniform surface flow through that bore.

17 Q. Is it your opinion that the diameter  
18 understanding of internal diameter would still allow the  
19 sentence to make sense to a person of ordinary skill?

20 A. Yes.

21 Q. To a certain of ordinary skill in the oil and  
22 gas industry, if presented with a text that could have  
23 both meanings, diameter and sidewall, is there a  
24 preference or an understanding that a POSA would have as  
25 between those two definitions?

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1           **A. Not with one sentence standing by itself like**  
2     **that, I don't think there's a preference. And in this**  
3     **case, like we discussed, both work.**

4           **Q. At this point, could you please turn to column**  
5     **1 of the '445 patent? It appears on page 10 of the**  
6     **document in front of you.**

7           **A. Okay.**

8           **Q. If you could, look to the lines 47 through 55**  
9     **which read, In many casing float techniques and devices**  
10    **it may not be possible to achieve full casing ID inside**  
11    **diameter following the opening of the air chamber. It**  
12    **is desirable to achieve full casing ID so that downhole**  
13    **tools can be conveyed to this region of the casing**  
14    **string and so operations, such as cementing, can be**  
15    **easily carried out using conventional ball drop**  
16    **techniques or other conventional techniques. Also, many**  
17    **float devices require the use of specialized float shoes**  
18    **and/or float collars.**

19           **Have I read that accurately?**

20           **A. Yes.**

21           **Q. In the context of this paragraph, do you see**  
22    **where the term "ID" is used --**

23           **A. Yes, I do.**

24           **Q. -- as an abbreviation?**

25           **Do you see where the word "inside diameter" is**

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1 used?

2 A. Oh, yes, in the parenthesis.

3 Q. In this paragraph, does the term "ID" or  
4 "inside diameter" refer to a diameter or a sidewall?

5 A. In my reading, it's sidewall, but I think both  
6 work in this full casing ID context.

7 Q. What about this paragraph makes you think that  
8 the sidewall definition could be used?

9 A. It's the same as the abstract sentence we just  
10 discussed. It just refers to one -- the motivation to  
11 achieve a full bore -- you know, bore is the same --  
12 it's another synonym for ID. So in, you know, oilfield  
13 terminology and working with downhole tools, it's just  
14 very common to talk in terms of ID, meaning that inside  
15 surface or that inside bore flow path through the  
16 tubulars.

17 Q. Thank you, Dr. Rodgers.

18 If you could, look to column 2, which appears  
19 on the same page. Column 2, lines 40 through 44. Where  
20 the sentence begins, In addition, full casing ID, inside  
21 diameter, is restored after the rupture disc is broken  
22 so that there is no need to drill out any part of the  
23 device. This full casing ID is useful for use in ball  
24 drop systems.

25 In these sentences, does the term "ID" or

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1 "inside diameter" refer to a diameter or a sidewall?

2 A. It's pretty much the same as the last couple  
3 of examples. I read it first as inside diameter being  
4 the surface, but it works with both.

5 Q. Why do you read this first as being the inside  
6 surface?

7 A. Because that's the most common usage in, you  
8 know, downhole tool oilfield discussion terminology  
9 among persons of ordinary skill, unless there's a  
10 specific measurement. You know, if I'm trying to  
11 measure the internal diameter, that's one thing.

12 I don't read this as a measurement requirement  
13 in the sense I'm thinking more full flow through the  
14 internal -- you know, internal bore, internal diameter  
15 of that casing, and that doesn't require that I quantify  
16 it as a scaler.

17 Q. If you would, please, turn to column 6, which  
18 appears on page 12 of the document. I would like to  
19 direct your attention to lines 62 through 66 where it  
20 says, Once the disc has been ruptured, the inside  
21 diameter of the casing string in the region of the  
22 rupture disc assembly 10 is substantially the same as  
23 that in the remainder of the casing string, e.g., casing  
24 ID, inner diameter, is restored following rupture of the  
25 disc.



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1 In this paragraph, does the term "inner  
2 diameter" or "ID" refer to a diameter or a sidewall?

3 **A. This sounds more like a numerical diameter,**  
4 **because I'm actually saying it's the same as the casing**  
5 **string. That triggers me to think measurement of**  
6 **diameter.**

7 Q. Is it your opinion that a comparison of inner  
8 diameters, or IDs, refers to the diameter understanding  
9 of internal diameter?

10 MR. LLAGOSTERA: Objection, form.

11 **A. That's going to depend on the sentence. I**  
12 **know in this case that's what comes to mind when I read**  
13 **this.**

14 Q. (BY MR. HANCOCK) Is it the word "same,"  
15 "substantially the same as" that gives you that context  
16 in this sentence?

17 **A. Yes, I'd say that's right.**

18 Q. Would you understand the phrase "substantially  
19 the same" to be a comparison?

20 **A. Yes.**

21 Q. If you would, please turn to column 7, which  
22 appears on the top of page 13.

23 **A. Okay.**

24 Q. I direct your attention to column 7, lines 3  
25 and 4 where it says, In other words, the tubular string

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1 well fluid, the casing string having an internal  
2 diameter that defines a fluid passageway between an  
3 upper portion of the casing string and a lower portion  
4 of the casing string, the float tool comprising.

5 Have I read that accurately?

6 **A. Yes.**

7 Q. Do you understand here -- or, first, as used  
8 in the preamble, does the phrase "internal diameter"  
9 carry its diameter or sidewall definition?

10 **A. I read it as sidewall.**

11 Q. What from this context makes you believe that  
12 it refers to the sidewall rather than the diameter?

13 **A. I'm just talking in general terms about the**  
14 **fluid passage of the interior of a casing string, and to**  
15 **me that's the sidewall definition.**

16 Q. At this point, I would like to introduce what  
17 will be Deposition Exhibit 6, which is a table referring  
18 to casing diameters which will be dropped in the chat  
19 momentarily.

20 (Exhibit 6 marked.)

21 MR. LLAGOSTERA: Dr. Rodgers, do you need  
22 a break? We've been going more than an hour. I'm fine  
23 if you're fine.

24 **THE WITNESS: I'm fine. Happy to keep**  
25 **going. Thank you, though.**

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1 MR. LLAGOSTERA: Okay.

2 Q. (BY MR. HANCOCK) All right. Let me know when  
3 you have that downloaded and open.

4 A. Okay. I have it.

5 Q. Dr. Rodgers, do you recognize this document?

6 A. I do.

7 Q. What is this document?

8 A. I referred to it as the World Oil casing  
9 tables.

10 Q. Can you describe what the World Oil casing  
11 tables are?

12 A. Yeah, World Oil is just an industry  
13 publication in the oil industry. And at some interval,  
14 they publish something known as casing tables, which are  
15 just a listing of many different products offered in the  
16 industry that relate to casing, different types of  
17 casing.

18 Q. On page 2 of the document in front of you, do  
19 you see a section that's entitled "Dimension  
20 Nomenclature"?

21 A. Yes.

22 Q. Do you see on the third line of definitions  
23 the lower case d, which it says, "d = ID (drift) in."?

24 A. Yes.

25 Q. What does that refer to?

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1           A.    That refers to the measurement or the straight  
2 diameter definition that you've been describing of the  
3 interior diameter of that casing.

4           Q.    Is the feature that is described here with  
5 lower case d shown in any of the figures to the right of  
6 these definitions?

7           A.    Yes.   Each one of them -- each one of the four  
8 figures has the little d pointed out.

9           Q.    Would you describe those -- excuse me.   Strike  
10 that question.

11                   In each of the circumstances in the four  
12 figures shown to the right, does the letter d refer to a  
13 diameter or a sidewall of the casing strings depicted?

14           A.    They're referring to a diameter, the  
15 measurement.

16           Q.    And how are you -- how are you -- strike the  
17 question.

18                   What leads you to the conclusion that here  
19 it's referring to the diameter and not the sidewall?

20           A.    We're talking about -- this document is  
21 talking about specific examples and specific sizes of  
22 available products on the market.   So they're referring  
23 here, especially you can tell from the equals sign and  
24 the units of inches, I-N, that they're talking about a  
25 numerical value here.

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1 Q. Here does the term "ID" depicted as lower case  
2 d refer to the diameter of a fluid passage through the  
3 devices depicted in the figures?

4 A. Yes, it's the diameter of the casing which is  
5 also the diameter of the fluid passage.

6 Q. Returning to the '445 patent, in the preamble  
7 of claim 1 that begins on line 6 of column 14, is there  
8 something different about the phrase "internal diameter"  
9 that defines a fluid passageway that would provide to  
10 you a different understanding of internal diameter than  
11 the exhibit we just looked at?

12 MR. LLAGOSTERA: Objection, form.

13 A. Yes. I mean, there's no -- there's no cue in  
14 that part of the sentence that indicates anything  
15 numerical or measurement oriented to me.

16 Q. (BY MR. HANCOCK) Turning to the limitation  
17 that begins on line 17, do you see the phrase at the  
18 very end of that limitation "the internal diameter of  
19 the casing string"?

20 A. As in parallel to the internal diameter of the  
21 casing string?

22 Q. Yeah. Do you see the phrase "internal  
23 diameter of the casing string"?

24 A. Yes.

25 Q. Would you understand that as referring to the

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1 Q. I would like to ask you some questions about  
2 the term "sealing engagement." Prior to reading the  
3 '445 patent, were you aware of the term "sealing  
4 engagement" in any context?

5 A. No. It sounds like patent terminology to me  
6 again.

7 Q. What does the term "engagement" mean?

8 A. Some sort of interaction between two items,  
9 two components in a downhole tool context.

10 Q. Can two elements or components be in  
11 engagement with one another if they are merely touching?

12 A. Yes.

13 Q. Would you refer to the binder sitting in front  
14 of you as an engagement with the table that it's sitting  
15 on?

16 A. Yes.

17 Q. Dr. Rodgers, at this point I would like to  
18 introduce what will be Deposition Exhibit 9, which is a  
19 listing of definitions from The Random House College  
20 Dictionary.

21 (Exhibit 9 marked.)

22 Q. (BY MR. HANCOCK) Please let me know when you  
23 have that document open in front of you.

24 A. Okay. I have it.

25 Q. Can you please turn to page 5 of that

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1 document, which is a page from that dictionary with  
2 words that start with the letter E.

3 A. I have it.

4 Q. At the bottom left side of the page, the term  
5 "engage" appears. Dr. Rodgers, can you please read to  
6 yourself that definition for a moment?

7 A. Okay.

8 Q. Do any of the definitions listed here in this  
9 dictionary entry use the term or refer to the term  
10 "engage" in the same sense that it is used in the '445  
11 patent?

12 A. Well, engage is used in multiple ways in the  
13 '445 patent or in multiple places. Sometimes it's  
14 sealing engagement. Sometimes there are other types of  
15 engagement. So we might have to be -- we would have to  
16 consider them independently. But, in general, there are  
17 a few terms here, you know, tubular member locked with,  
18 to attach, to secure obviously. We talked about that.  
19 And interlock 14 there in the context of gears. So all  
20 those are roughly related to the physics of things in  
21 contact.

22 Q. And just for clarity in looking at that  
23 dictionary entry, am I correct in saying that you are  
24 referring to definitions number 8 and number 9 and  
25 number 14?

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1       **A.     That's correct.**

2           Q.     Is the binder sitting on your desk engaged  
3 with the table in the sense of any of those definitions?

4           **A.     Yes.   I see the binder as making contact with**  
5 **force.   There is engagement between the binder and the**  
6 **table.**

7           Q.     Where in the dictionary entry in front of you  
8 is in contact sufficient to be engaged?

9           **A.     My read on those three definitions means I**  
10 **have some sort of contact or force between the items.**  
11 **So all three of the ones that I referenced before,**  
12 **clearly 8 and 14 are more specialized definitions**  
13 **perhaps going towards gear design, but in mechanical**  
14 **engineering in general, I would say that all three of**  
15 **them refer to the fact that there's a contact that**  
16 **occurs between the two objects, some sort of contact.**

17          Q.     Is contact alone sufficient for two components  
18 to be engaged with one another?

19                   MR. LLAGOSTERA:   Objection, asked and  
20 answered.

21          **A.     That's -- that's what I'm saying.**

22          Q.     (BY MR. HANCOCK)   Dr. Rodgers, in the sense of  
23 the '445 patent where the term "sealing engagement" is  
24 used, can two components be in sealing engagement with  
25 one another, move relative to one another, while



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1 Does the sidewall or diameter definition apply  
2 to the use of internal diameter in the claim amendment  
3 presented on page 2?

4 **A. Sidewall.**

5 Q. And with this amendment, what is the internal  
6 diameter of the casing string parallel to?

7 MR. LLAGOSTERA: Objection to form.

8 **A. The region of the tubular member where the**  
9 **rupture disc is attached.**

10 Q. (BY MR. HANCOCK) Is it your understanding  
11 from the claim that the region where the rupture disc is  
12 attached must have an internal diameter?

13 **A. It's a region of a tubular member. So it's**  
14 **going to have -- it's going to be cylindrical, and it's**  
15 **going to have an internal diameter.**

16 Q. Is it your understanding that internal  
17 diameter must be the diameter understanding of the term  
18 "internal diameter" in order to be compared as larger  
19 than the internal diameter of the casing string?

20 MR. LLAGOSTERA: Objection, form.

21 Q. (BY MR. HANCOCK) Go ahead. Don't answer that  
22 question. I'll ask a better one.

23 **A. Okay.**

24 Q. In the version of claim 1 on page 2 where it  
25 reads "The region of the tubular member where the

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1 rupture disc is attached has a larger internal diameter  
2 than the internal diameter of the casing string," you've  
3 now testified twice today that that refers to the  
4 diameter understanding of internal diameter. Is that  
5 correct?

6 **A. Yes, that's right.**

7 Q. Does that mean that the larger internal  
8 diameter of the region of the tubular member where the  
9 rupture disc is attached also refers to the diameter  
10 understanding of internal diameter?

11 MR. LLAGOSTERA: Objection, form.

12 **A. If you have a larger internal diameter than**  
13 **the internal diameter of the casing string, that is**  
14 **referring to the term -- the definition "diameter"**  
15 **meaning measurement.**

16 Q. (BY MR. HANCOCK) Is it possible to determine  
17 if an internal diameter under the diameter understanding  
18 of internal diameter is parallel to an internal diameter  
19 under the sidewall definition of internal diameter?

20 MR. LLAGOSTERA: Objection, form.

21 **A. No, it doesn't make any sense to try to say**  
22 **it's parallel to an internal diameter if that internal**  
23 **diameter means diameter as in measurement.**

24 Q. (BY MR. HANCOCK) Please turn to page 11 of  
25 this response.

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1 column -- sorry, let me give you a moment to get it up.

2 **A. I've got it.**

3 Q. Can you please turn to column 8 of the Gano  
4 references lines 45 and 46?

5 Do you see the sentence that reads, It also  
6 presents inwardly facing upper arcuate shoulders 126  
7 upon which the radial edges of plug 102 are seated?

8 Have I read that accurately?

9 **A. Yes.**

10 Q. Do you see the use of the term "seated" to  
11 describe the rupture disc as seated on element 126 in  
12 that sentence of Gano?

13 **A. Yes.**

14 Q. Turning to figure 3 of Gano, can you identify  
15 the rupture disc 104 and the shoulder 126? And all I  
16 need is confirmation that you have identified where  
17 those are.

18 **A. Yes, I see it -- them.**

19 Q. Would a person of ordinary skill in the art  
20 presume from the sentence that I just read and the  
21 figure that you see in front of you that a substantially  
22 fluid tight seal would be formed between the rupture  
23 disc 104 and shoulder 126?

24 **A. No.**

25 Q. Why not?

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1           A.    I don't have enough information to know that  
2 the rupture disc is sealing to that shoulder 126. It's  
3 seated on it, but that doesn't mean it's sealed to it.

4           Q.    Is it your understanding that the float  
5 tool -- excuse me, let me strike that.

6                   Is it your understanding that the tool  
7 depicted in figure 3 of Gano is a rupture disc assembly  
8 for blocking a pipe of some kind?

9           A.    Yes.

10          Q.    To the extent that a seal is not formed  
11 between rupture disc 104 and shoulder 126, do you have  
12 any opinions as to where that seal might be formed?

13          A.    Yes. There's an O-ring or some sort of seal  
14 at 118 on the upper surface of the rupture disc.

15          Q.    Are you referring to element 118 or 116? 116  
16 appears in my version to be the O-ring.

17          A.    118. 116 is the O-ring for that upper piston.  
18 I forget exactly the terminology. But then there's a  
19 second seal that's got to occur between 114, which is  
20 that upper piston, and the rupture disc itself. It's a  
21 triangular region there.

22          Q.    Understood.

23                   So then your understanding of Gano is that the  
24 rupture disc 104 is sealed or creates a seal at element  
25 118 but is seated on surface 126?

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**1 A. Yes.**

2 Q. Returning to Deposition Exhibit 12, the  
3 response to notice of noncompliant amendment, and  
4 referring to the last sentence of the first paragraph of  
5 page 12, would it be fair to say that this sentence is  
6 discussing the Gano reference and what the Gano  
7 reference discloses?

**8 A. Yes.**

9 Q. Does this sentence refer to or describe any  
10 feature of figure 2 of the '445 patent?

**11 A. I don't think so.**

12 Q. Can you please turn to figure 2 of the '445  
13 patent?

**14 A. Okay.**

15 Q. In the embodiment shown in figure 2, is the  
16 rupture disc seated on any feature of the embodiment  
17 shown in figure 2?

**18 A. Yes.**

19 Q. Where is the rupture disc seated?

**20 A. It's seated on the sheer tabs, which is part  
21 of the sheer ring.**

22 Q. Returning to claim 1 of the '445 patent, I  
23 would like to discuss the next limitation, which is that  
24 the attachment region is parallel to an internal  
25 diameter of the casing string.

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CHANGES AND SIGNATURE

WITNESS NAME: JOHN P. RODGERS, Ph.D., P.E.

DATE OF DEPOSITION: NOVEMBER 9, 2020

PAGE	LINE	CHANGE	REASON
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I, JOHN P. RODGERS, Ph.D., P.E., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

\_\_\_\_\_  
JOHN P. RODGERS, Ph.D., P.E.

THE STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_, on this day personally appeared JOHN P. RODGERS, Ph.D., P.E., known to me (or proved to me under oath or through \_\_\_\_\_) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

NCS MULTISTAGE INC.                     )  
Plaintiff,                                     )  
vs.   ) CIVIL ACTION NO.  
NINE ENERGY SERVICE,                 ) 6:20-cv-00277-ADA  
INC.   )  
Defendant.                                 )

REPORTER'S CERTIFICATION  
REMOTE VIDEOTAPED DEPOSITION OF  
JOHN P. RODGERS, Ph.D., P.E.  
NOVEMBER 9, 2020

I, Julie C. Brandt, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

That the witness, JOHN P. RODGERS, Ph.D., P.E., was  
duly sworn by the officer and that the transcript of the  
oral deposition is a true record of the testimony given  
by the witness;

Before completion of the deposition, review of the  
transcript [X] was [ ] was not requested. If requested,  
any changes made by the deponent (and provided to the  
reporter) during the period allowed are appended hereto;

That the amount of time used by each party at the



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1 deposition is as follows:

2 Domingo Manuel Llagostera.....00 HOUR(S):05 MINUTE(S)

3 Parker Hancock.....04 HOUR(S):27 MINUTE(S)

4 That pursuant to information given to the  
5 deposition officer at the time said testimony was taken,  
6 the following includes counsel for all parties of  
7 record:

8 FOR THE PLAINTIFF:

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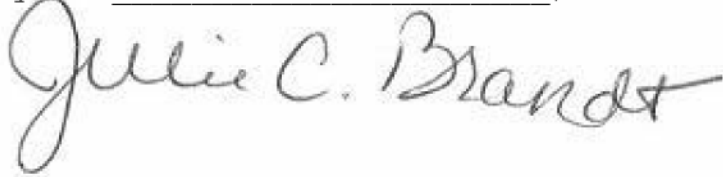
25 hpreston@velaw.com

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1 I further certify that I am neither counsel for,  
2 related to, nor employed by any of the parties or  
3 attorneys in the action in which this proceeding was  
4 taken, and further that I am not financially or  
5 otherwise interested in the outcome of the action.

6 Certified to by me \_\_\_\_\_, 2020.

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10 Julie C. Brandt, CSR, RMR, CRR  
11 Texas CSR No. 4018  
12 Expiration Date: 10/31/21  
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